

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation  
Against:

**RICHARD WALLRATH, M.D.**

Physician's and Surgeon's  
Certificate No. CFE 34437

Respondent

File No. 08-2005-168594

**DECISION**

The attached Stipulation and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on **March 27, 2009.**

IT IS SO ORDERED **February 25, 2009.**

MEDICAL BOARD OF CALIFORNIA

By:

*Barbara Yaroslavsky*  
Barbara Yaroslavsky, Chair  
Panel B

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 GAIL M. HEPPELL  
Supervising Deputy Attorney General  
3 G. LYNN THORPE, State Bar No. 112122  
Deputy Attorney General  
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7 Attorneys for Complainant

8 **BEFORE THE**  
9 **MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 08-2005-168594

OAH No. 08-2005-168594

13 **RICHARD WALLRATH, M.D.**

2204 Q Street, Unit A  
14 Bakersfield, California 93301

15 Physician's and Surgeon's Certificate  
No. CFE 34437

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

16  
17 Respondent.

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
19 above-entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Barbara Johnston (Complainant) is the Executive Director of the Medical  
22 Board of California. She brought this action solely in her official capacity and is represented in  
23 this matter by Edmund G. Brown Jr., Attorney General of the State of California, by G. Lynn  
24 Thorpe, Deputy Attorney General.

25 2. Respondent Richard Wallrath, M.D. (Respondent) is represented in this  
26 proceeding by attorney Peter R. Osinoff, Esq., whose address is 3699 Wilshire Boulevard, 10th  
27 Floor, Los Angeles, CA 90010-2719.

28 3. On or about August 11, 1972, the Medical Board of California issued

1 Physician and Surgeon's Certificate Number C 34437 to Richard Wallrath, M.D. (Respondent),  
2 and at all times relevant to the charges herein, this license was in full force and effect. A  
3 Disabled Status was granted at Respondent's request on August 2, 2007. Respondent's Physician  
4 and Surgeon's Certificate Number is now CFE 34437 with an expiration date of September 30,  
5 2008.

#### 6 JURISDICTION

7 4. Accusation No. 08-2005-168594 was filed before the Medical Board of  
8 California (Board), Department of Consumer Affairs, and is currently pending against  
9 Respondent. The Accusation and all other statutorily required documents were properly served  
10 on Respondent on May 29, 2008. Respondent timely filed his Notice of Defense contesting the  
11 Accusation. A copy of Accusation No. 08-2005-168594 is attached as Exhibit A and  
12 incorporated herein by reference.

#### 13 ADVISEMENT AND WAIVERS

14 5. Respondent has carefully read, fully discussed with counsel, and  
15 understands the charges and allegations in Accusation No. 08-2005-168594. Respondent has  
16 also carefully read, fully discussed with counsel, and understands the effects of this Stipulated  
17 Settlement and Disciplinary Order.

18 6. Respondent is fully aware of his legal rights in this matter, including the  
19 right to a hearing on the charges and allegations in the Accusation; the right to be represented by  
20 counsel at his own expense; the right to confront and cross-examine the witnesses against him;  
21 the right to present evidence and to testify on his own behalf; the right to the issuance of  
22 subpoenas to compel the attendance of witnesses and the production of documents; the right to  
23 reconsideration and court review of an adverse decision; and all other rights accorded by the  
24 California Administrative Procedure Act and other applicable laws.

25 7. Respondent voluntarily, knowingly, and intelligently waives and gives up  
26 each and every right set forth above.

#### 27 CULPABILITY

28 8. Respondent does not contest that, at an administrative hearing,

Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 08-2005-168594 and that he has thereby subjected his license to disciplinary action.

9. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in Accusation No. 08-2005-168594 shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California.

10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Medical Board of California (Board)'s imposition of discipline as set forth in the Disciplinary Order below.

## RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

## CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated

1 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same  
2 force and effect as the originals.

3 14. In consideration of the foregoing admissions and stipulations, the parties  
4 agree that the Board may, without further notice or formal proceeding, issue and enter the  
5 following Disciplinary Order:

6 **DISCIPLINARY ORDER**

7 **IT IS HEREBY ORDERED** that Physician's and Surgeon's Certificate No. CFE  
8 34437 issued to Respondent Richard Wallrath, M.D. (Respondent) is revoked. However, the  
9 revocation is stayed and Respondent is placed on probation for five (5) years on the following  
10 terms and conditions.

11 1. **EDUCATION COURSE** Within 60 calendar days of the effective date  
12 of this Decision, and on an annual basis thereafter, Respondent shall submit to the Division or its  
13 designee for its prior approval educational program(s) or course(s) which shall not be less than  
14 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be  
15 aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified,  
16 limited to classroom, conference, or seminar settings. The educational program(s) or course(s)  
17 shall be at Respondent's expense and shall be in addition to the Continuing Medical Education  
18 (CME) requirements for renewal of licensure. Following the completion of each course, the  
19 Division or its designee may administer an examination to test Respondent's knowledge of the  
20 course. Respondent shall provide proof of attendance for 65 hours of continuing medical  
21 education of which 40 hours were in satisfaction of this condition.

22 2. **MEDICAL RECORD KEEPING COURSE** Within 60 calendar days  
23 of the effective date of this decision, Respondent shall enroll in a course in medical record  
24 keeping, at Respondent's expense, approved in advance by the Division or its designee. Failure  
25 to successfully complete the course during the first 6 months of probation is a violation of  
26 probation.

27 A medical record keeping course taken after the acts that gave rise to the charges  
28 in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the

1 Division or its designee, be accepted towards the fulfillment of this condition if the course would  
2 have been approved by the Division or its designee had the course been taken after the effective  
3 date of this Decision.

4 Respondent shall submit a certification of successful completion to the Division  
5 or its designee not later than 15 calendar days after successfully completing the course, or not  
6 later than 15 calendar days after the effective date of the Decision, whichever is later.

7 3. **CLINICAL TRAINING PROGRAM** Within 60 calendar days of the  
8 effective date of this Decision, Respondent shall enroll in a clinical training or educational  
9 program equivalent to the Physician Assessment and Clinical Education Program (PACE)  
10 offered at the University of California - San Diego School of Medicine ("Program").

11 The Program shall consist of a Comprehensive Assessment program comprised of  
12 a two-day assessment of Respondent's physical and mental health; basic clinical and  
13 communication skills common to all clinicians; and medical knowledge, skill and judgment  
14 pertaining to Respondent's specialty or sub-specialty, and at minimum, a 40 hour program of  
15 clinical education in the area of practice in which Respondent was alleged to be deficient and  
16 which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any  
17 other information that the Division or its designee deems relevant. Respondent shall pay all  
18 expenses associated with the clinical training program.

19 Based on Respondent's performance and test results in the assessment and clinical  
20 education, the Program will advise the Division or its designee of its recommendation(s) for the  
21 scope and length of any additional educational or clinical training, treatment for any medical  
22 condition, treatment for any psychological condition, or anything else affecting Respondent's  
23 practice of medicine. Respondent shall comply with Program recommendations.

24 At the completion of any additional educational or clinical training, Respondent  
25 shall submit to and pass an examination. The Program's determination whether or not  
26 Respondent passed the examination or successfully completed the Program shall be binding.

27 Respondent shall complete the Program not later than six months after  
28 Respondent's initial enrollment unless the Division or its designee agrees in writing to a later

1 time for completion.

2 Failure to participate in and complete successfully all phases of the clinical  
3 training program outlined above is a violation of probation.

4 Respondent shall not practice medicine until Respondent has successfully  
5 completed the Program and has been so notified by the Division or its designee in writing, except  
6 that Respondent may practice in a clinical training program approved by the Division or its  
7 designee. Respondent's practice of medicine shall be restricted only to that which is required by  
8 the approved training program.

9 4. **MONITORING - PRACTICE** Within 30 calendar days of the effective  
10 date of this Decision, Respondent shall submit to the Division or its designee for prior approval  
11 as a practice monitor, the name and qualifications of one or more licensed physicians and  
12 surgeons whose licenses are valid and in good standing, and who are preferably American Board  
13 of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or  
14 personal relationship with Respondent, or other relationship that could reasonably be expected to  
15 compromise the ability of the monitor to render fair and unbiased reports to the Division,  
16 including, but not limited to, any form of bartering, shall be in Respondent's field of practice,  
17 and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

18 The Division or its designee shall provide the approved monitor with copies of the  
19 Decision and Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of  
20 the Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed  
21 statement that the monitor has read the Decision and Accusation, fully understands the role of a  
22 monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees  
23 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the  
24 signed statement.

25 Within 60 calendar days of the effective date of this Decision, and continuing  
26 throughout probation, Respondent's practice shall be monitored by the approved monitor.  
27 Respondent shall make all records available for immediate inspection and copying on the  
28 premises by the monitor at all times during business hours, and shall retain the records for the

entire term of probation.

The monitor shall submit a quarterly written report to the Division or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of medicine or billing, or both, and whether Respondent is practicing medicine safely, billing appropriately or both.

It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Division or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Division or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 days of the resignation or unavailability of the monitor, Respondent shall be suspended from the practice of medicine until a replacement monitor is approved and prepared to assume immediate monitoring responsibility. Respondent shall cease the practice of medicine within 3 calendar days after being so notified by the Division or designee.

In lieu of a monitor, Respondent may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above is a violation of probation.

5. **SOLO PRACTICE** Respondent is prohibited from engaging in the solo practice of medicine.

6. **NOTIFICATION** Prior to engaging in the practice of medicine, the



Respondent shall provide a true copy of the Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Division or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

7. **SUPERVISION OF PHYSICIAN ASSISTANTS** During probation, Respondent is prohibited from supervising physician assistants.

8. **OBEY ALL LAWS** Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California, and remain in full compliance with any court ordered criminal probation, payments and other orders.

9. **QUARTERLY DECLARATIONS** Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

10. **PROBATION UNIT COMPLIANCE** Respondent shall comply with the Division's probation unit. Respondent shall, at all times, keep the Division informed of Respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Division or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Respondent shall not engage in the practice of medicine in Respondent's place of residence. Respondent shall maintain a current and renewed California physician's and surgeon's license.

Respondent shall immediately inform the Division, or its designee, in writing, of

travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days.

11. **INTERVIEW WITH THE DIVISION, OR ITS DESIGNEE**

Respondent shall be available in person for interviews either at Respondent's place of business or at the probation unit office, with the Division or its designee, upon request at various intervals, and either with or without prior notice throughout the term of probation.

12. **RESIDING OR PRACTICING OUT-OF-STATE** In the event

Respondent should leave the State of California to reside or to practice, Respondent shall notify the Division or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding 30 calendar days in which Respondent is not engaging in any activities defined in Sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Division or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

Respondent's license shall be automatically cancelled if Respondent's periods of temporary or permanent residence or practice outside California total two years. However, Respondent's license shall not be cancelled as long as Respondent is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

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2 13. **FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT**

3 In the event Respondent resides in the State of California and for any reason  
4 Respondent stops practicing medicine in California, Respondent shall notify the Division or its  
5 designee in writing within 30 calendar days prior to the dates of non-practice and return to  
6 practice. Any period of non-practice within California, as defined in this condition, will not  
7 apply to the reduction of the probationary term and does not relieve Respondent of the  
8 responsibility to comply with the terms and conditions of probation. Non-practice is defined as  
9 any period of time exceeding 30 calendar days in which Respondent is not engaging in any  
10 activities defined in sections 2051 and 2052 of the Business and Professions Code.

11 All time spent in an intensive training program which has been approved by the  
12 Division or its designee shall be considered time spent in the practice of medicine. For purposes  
13 of this condition, non-practice due to a Board-ordered suspension or in compliance with any  
14 other condition of probation, shall not be considered a period of non-practice.

15 Respondent's license shall be automatically cancelled if Respondent resides in  
16 California and for a total of two years, fails to engage in California in any of the activities  
17 described in Business and Professions Code sections 2051 and 2052.

18 14. **COMPLETION OF PROBATION** Respondent shall comply with all  
19 financial obligations (e.g., cost recovery, restitution, probation costs) not later than 120 calendar  
20 days prior to the completion of probation. Upon successful completion of probation,  
21 Respondent's certificate shall be fully restored.

22 15. **VIOLATION OF PROBATION** Failure to fully comply with any term  
23 or condition of probation is a violation of probation. If Respondent violates probation in any  
24 respect, the Division, after giving Respondent notice and the opportunity to be heard, may revoke  
25 probation and carry out the disciplinary order that was stayed. If an Accusation, Petition to  
26 Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation,  
27 the Division shall have continuing jurisdiction until the matter is final, and the period of  
28 probation shall be extended until the matter is final.

1                   16.     **LICENSE SURRENDER** Following the effective date of this Decision,  
2 if Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy  
3 the terms and conditions of probation, Respondent may request the voluntary surrender of  
4 Respondent's license. The Division reserves the right to evaluate Respondent's request and to  
5 exercise its discretion whether or not to grant the request, or to take any other action deemed  
6 appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender,  
7 Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the  
8 Division or its designee and Respondent shall no longer practice medicine. Respondent will no  
9 longer be subject to the terms and conditions of probation and the surrender of Respondent's  
10 license shall be deemed disciplinary action. If Respondent re-applies for a medical license, the  
11 application shall be treated as a petition for reinstatement of a revoked certificate.

12                   17.     **PROBATION MONITORING COSTS** Respondent shall pay the costs  
13 associated with probation monitoring each and every year of probation, as designated by the  
14 Division, which are currently set at \$3,173.00, but may be adjusted on an annual basis. Such  
15 costs shall be payable to the Medical Board of California and delivered to the Division or its  
16 designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar  
17 days of the due date is a violation of probation.

18                   18.     **DISABLED STATUS LICENSE** Respondent's Physician's and  
19 Surgeon's Certificate is presently in disabled status which, Respondent acknowledges and agrees,  
20 precludes him from practicing medicine. All terms and conditions of this Stipulated Decision  
21 and Disciplinary Order shall remain in full force and effect including the automatic cancellation  
22 provision for two years of non-practice in California. However, all terms and conditions which  
23 require and presuppose the authority to practice medicine to fulfill are tolled including Condition  
24 1 (Education Course), Condition 2 (Medical Record Keeping Course), Condition 3 (Clinical  
25 Assessment and Training Program), Condition 4 (Practice Monitor), Condition 5 (Solo Practice),  
26 Condition 6 (Notification), Condition 7 (Physician Assistants), Condition 9 (Quarterly  
27 Declarations), Condition 11 (Interview with Board or its Designee), and Condition 17 (Probation  
28 Monitoring Costs). If Respondent wishes to resume the practice of medicine and return to active

status at any time before his certificate would be canceled for non-practice pursuant to Condition 13 (Failure to Practice Medicine - California Resident), all conditions of probation will be imposed effective the date of return to active status. Respondent is aware that Condition 3 (Clinical Training Program) is a condition precedent to resuming the practice of medicine, except within the confines of the Clinical Training Program itself. Respondent agrees that any further limitations on practice recommended by the Clinical Training Program shall become part of his probation.

### ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Peter R. Osinoff, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: \_\_\_\_\_

10 Dec '08

RICHARD WALLRATH, M.D.  
Respondent

I have read and fully discussed with Respondent Richard Wallrath, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 12/10/08

PETER R. OSINOFF, ESQ.  
Attorney for Respondent

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**ENDORSEMENT**

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The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

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6

7

DATED:

12/11/08

8

EDMUND G. BROWN JR., Attorney General  
of the State of California

9

10

GAIL M. HEPPELL  
Supervising Deputy Attorney General

11

12

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G. LYNN THORPE  
Deputy Attorney General

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Attorneys for Complainant

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DOJ Matter ID: SA2008302390  
30609896.wpd

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**Exhibit A**

**Accusation No. 08-2005-168594**

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 GAIL M. HEPPELL  
Supervising Deputy Attorney General  
3 G. LYNN THORPE, State Bar No. 112122  
Deputy Attorney General  
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Telephone: (916) 322-9226  
6 Facsimile: (916) 327-2247

7 Attorneys for Complainant

8 **BEFORE THE**  
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11 In the Matter of the Accusation Against:

12 **RICHARD WALLRATH, M.D.**

13 2204 Q Street, Unit A  
Bakersfield, California 93301

14 Physician and Surgeon's Certificate  
No. CFE 34437

15  
16 Respondent.

Case No. 08-2005-168594

**A C C U S A T I O N**

17 Complainant alleges:

18 **PARTIES**

19 1. Barbara Johnston (Complainant) brings this Accusation solely in her  
20 official capacity as the Executive Director of the Medical Board of California, Department of  
21 Consumer Affairs.

22 2. On or about August 11, 1972, the Medical Board of California issued  
23 Physician and Surgeon's Certificate Number C 34437 to Richard Wallrath, M.D. (Respondent),  
24 and at all times relevant to the charges herein, this license was in full force and effect. A Retired  
25 Status was granted at Respondent's request on August 2, 2007. Respondent's Physician and  
26 Surgeon's Certificate Number is now CFE 34437 with an expiration date of September 30, 2008.

27 **JURISDICTION**

28 3. This Accusation is brought before the Medical Board of California

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO May 29 2008  
BY C. L. [Signature] ANALYST



1 (Board), Department of Consumer Affairs, under the authority of the following laws. All section  
2 references are to the Business and Professions Code unless otherwise indicated.

3 4. Section 2227 of the Code provides that a licensee who is found guilty  
4 under the Medical Practice Act may have his or her license revoked, suspended for a period not  
5 to exceed one year, placed on probation and required to pay the costs of probation monitoring, or  
6 such other action taken in relation to discipline as the Division<sup>1</sup> deems proper.

7 5. Section 2234 of the Code states:

8 "The Division of Medical Quality shall take action against any licensee who is  
9 charged with unprofessional conduct. In addition to other provisions of this article,  
10 unprofessional conduct includes, but is not limited to, the following:

11 "(b) Gross negligence.

12 "(c) Repeated negligent acts. To be repeated, there must be two or more  
13 negligent acts or omissions. An initial negligent act or omission followed by a separate  
14 and distinct departure from the applicable standard of care shall constitute repeated  
15 negligent acts."

16 6. Section 2266 of the Code states: "The failure of a physician and surgeon to  
17 maintain adequate and accurate records relating to the provision of services to their  
18 patients constitutes unprofessional conduct."

19 **FIRST CAUSE FOR DISCIPLINE**

20 (Gross Negligence in Care and Treatment of L.R.<sup>2</sup>)  
[Bus. & Prof. Code § 2234(b)]

21 7. Respondent is subject to disciplinary action under Section 2234(b) of the

22  
23 1. California Business and Professions Code section 2002, as amended and effective  
24 January 1, 2008, provides that, unless otherwise expressly provided, the term "board" as used in  
25 the State Medical Practice Act (Cal. Bus. & Prof. Code, §§ 2000, et seq.) means the "Medical  
26 Board of California," and references to the "Division of Medical Quality" and "Division of  
27 Licensing" in the Act or any other provision of law shall be deemed to refer to the Board.

28 2. The patient's name is abbreviated herein to protect patient confidentiality. The patient's  
full name will be provided upon receipt of a properly executed and served Request for  
Discovery.

1 Code. The circumstances are as follows:

2 8. On December 13, 1999, L.R., then 49 years old, presented to Respondent  
3 with vaginal bleeding for 21 days. Respondent performed a physical examination and ultrasound  
4 examination. Respondent made a diagnosis of menometrorrhagia secondary to anovulation.  
5 Respondent treated L.R. with Lurpon<sup>3</sup> therapy and Vitamin B12.

6 9. L.R. continued to experience heavy uterine bleeding. On June 21, 2000,  
7 Respondent wrote, "Dysfunctional uterine bleeding secondary to adenomyosis, on Lurpon  
8 treatment, third dose.

9 10. On May 2, 2001, L.R. insurance company informed Respondent that it was  
10 disapproving Lurpon therapy for L.R. as is Lurpon therapy was not an approved treatment for  
11 dysfunctional uterine bleeding.

12 11. On May 10, 2001, prior to performing a Dilation & Curette procedure ("D  
13 & C"), Respondent again diagnosed L.R. with adenomyosis. Respondent wrote that, "The  
14 patient needs to be on Lurpon until she is in her menopause."

15 12. Respondent continued to administer Lurpon to L.R. on or about the  
16 following dates:

- 17 A. July 10, 2001;
- 18 B. August 9, 2001;
- 19 C. September 11, 2001;
- 20 D. October 10, 2001;
- 21 E. July 30, 2002;
- 22 F. September 18, 2002;
- 23 G. October 9, 2002; and
- 24 H. October 30, 2002

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27

28 3. Lurpon is a synthetic nonapeptide analog of naturally occurring gonadotropin releasing hormone.

1                   13.     The May 10, 2001, D & C revealed that L.R. had complex endometrial  
2 hyperplasia without atypia.<sup>4</sup> Respondent prescribed estrogen replacement therapy to treat L.R.'s  
3 complex endometrial hyperplasia. Respondent failed to treat complex endometrial hyperplasia  
4 with progestin.

5                   14.     On November 6, 2002, Respondent performed a NovaSure endometrial  
6 ablation procedure.<sup>5</sup> Respondent performed the procedure without first determining that L.R. did  
7 not have complex endometrial hyperplasia with atypia or endometrial cancer.

8                   15.     Respondent's actions as set forth below, constitute gross negligence and  
9 subject him to discipline within the meaning of Section 2234(b) of the Code:

10                  a.     Prescribing Lurpon, on a long-term basis, as more fully discussed in  
11 paragraphs 8 through 10 above;

12                  b.     Prescribing estrogen therapy to treat L.R.'s complex endometrial  
13 hyperplasia;

14                  c.     Failing to prescribe progestin to treat L.R.'s complex endometrial  
15 hyperplasia; and

16                  d.     Failing to rule out that L.R. did not have complex endometrial hyperplasia  
17 with atypia or endometrial cancer before performing the November 6, 2002, NovaSure  
18 endometrial ablation procedure.

19                                 **SECOND CAUSE FOR DISCIPLINE**

20                                 (Gross Negligence in Care and Treatment of J.H.-J.)  
                                      [Bus. & Prof. Code § 2234(b)]

21                   16.     Respondent is subject to disciplinary action under Section 2234(b) of the  
22 Code. The circumstances are as follows:

23     ///

24     ///

25  
26                   4. Increase in the number of endometrial glands; here there is no atypia, but complex  
27 endometrial hyperplasia *with* atypia may progress to adenocarcinoma.

28                   5. A procedure to remove the lining, or endometrium, of the uterus.

1           17.     On December 30, 2004, J.H.-J. presented to Respondent for a previously  
2 scheduled Restylane<sup>6</sup> injection. Respondent also administered Botox to J.H.-J. J.H.-J. had not  
3 discussed or consented to the Botox injection by Respondent.

4           18.     Respondent's patient records for J.H.-J. do not include a written consent  
5 for the Botox treatment. Further, Respondent's patient records for J.H.-J. does not have a  
6 notation concerning verbal consent. Lastly, Respondent's patient records for J.H.-J. do not have  
7 any notes concerning Respondent's treatment of J.H.-J. on December 30, 2004.

8           19.     Respondent's actions of injecting J.H.-J. with Botox without her consent  
9 constitute gross negligence and subject Respondent to discipline within the meaning of Section  
10 2234(b) of the Code.

11                           **THIRD CAUSE FOR DISCIPLINE**

12                           (Failure to Maintain Adequate Medical Records)  
                              [Bus. & Prof. Code § 2266]

13           20.     Complainant realleges paragraphs 16 through 19 as if fully set forth herein.

14           21.     Respondent's failure to keep any records of his Botox treatment of J.H.-J.  
15 on December 30, 2004 constitutes a failure to maintain adequate medical records and subjects  
16 Respondent to discipline within the meaning of Section 2266 of the Code.

17                           **FOURTH CAUSE FOR DISCIPLINE**

18                           (Repeated Negligent Acts)  
                              [Bus. & Prof. Code § 2234(c)]

19           22.     Respondent is subject to disciplinary action under Section 2234(c) of the  
20 Code. The circumstances are as follows:

21           23.     Complainant realleges paragraphs 7 through 15, as if fully set forth herein,  
22 concerning Respondent's care and treatment of L.R.

23           24.     Complainant realleges paragraphs 16 through 19, as if fully set forth  
24 herein, concerning Respondent's care and treatment of J.H.-J.

25           25.     C.W. was a patient of Respondent's from November 2, 1999 to

26  
27  
28           6. Restylane is a treatment to minimize or remove wrinkles of the skin.

1 September 3, 2003. During the course of her care with Respondent, C.W. reported amenorrhea<sup>7</sup>,  
2 hot flashes, memory loss and decreased libido. Respondent treated C.W. with estrogen,  
3 testosterone and Vitamin B12. Respondent's records do not indicate that he prescribed  
4 progesterone. Respondent's failure to treat C.W. with progesterone, at least every three months,  
5 constitutes a negligent act within the meaning of Section 2234(c) of the Code.

6 26. A.W. was a patient of Respondent's from April 19, 2001 to September 27,  
7 2005 for perimenopausal symptoms. Respondent treated A.W. with estrogen, testosterone and  
8 Vitamin B12. A.W. received a 14 day treatment of Prometium (progesterone) on March 12,  
9 2002, November 22, 2002, and June 24, 2004. Respondent's failure to treat A.W. with  
10 progesterone, at least every three months, constitutes a negligent act within the meaning of  
11 Section 2234(c) of the Code.

12 27. Respondent's actions as set forth below, constitute repeated negligent acts  
13 and subject Respondent to discipline within the meaning of Section 2234(c) of the Code:

14 a. Prescribing Lurpon to L.R., on a long-term basis, as more fully discussed  
15 in paragraphs 8 through 10 above;

16 b. Prescribing estrogen therapy to treat L.R.'s complex endometrial  
17 hyperplasia;

18 c. Failing to prescribe progestin to treat L.R.'s complex endometrial  
19 hyperplasia;

20 d. Failing to rule out that L.R. did not have complex endometrial hyperplasia;

21 e. Failing to receive consent from J.H.-J. to inject her with Botox on  
22 December 30, 2004;

23 f. Failing to treat C.W. with progesterone as part of her hormone therapy;  
24 and,

25 g. Failing to treat A.W. with progesterone on a least a quarterly basis as part  
26 of her hormone therapy.

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27  
28 7. Absence or abnormal cessation of menses.

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
3 alleged, and that following the hearing, the Medical Board of California issue a decision:

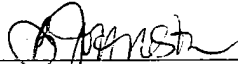
4 1. Revoking or suspending Physician and Surgeon's Number CFE 34437,  
5 issued to Richard Wallrath, M.D.;

6 2. Revoking, suspending or denying approval of Richard Wallrath, M.D.'s  
7 authority to supervise physician's assistants, pursuant to section 3527 of the Code;

8 3. Ordering Respondent to pay the costs for probation monitoring if  
9 probation is imposed; and

10 4. Taking such other and further action as deemed necessary and proper.

11  
12 DATED: May 29, 2008

13  
14   
15 BARBARA JOHNSTON  
16 Executive Director  
17 Medical Board of California  
18 Department of Consumer Affairs  
19 State of California  
20 Complainant  
21  
22  
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